

No. 05-35264

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RANCHERS CATTLEMEN ACTION LEGAL FUND
UNITED STOCKGROWERS OF AMERICA,

Plaintiff-Appellee,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE,
ANIMAL AND PLANT HEALTH INSPECTION SERVICE, and MIKE JOHANNIS,
in his capacity as the Secretary of Agriculture,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Montana

**REPLY OF THE NATIONAL CATTLEMEN'S BEEF ASSOCIATION,
AMERICAN FARM BUREAU FEDERATION, NATIONAL PORK PRODUCERS COUNCIL,
29 STATE CATTLEMEN'S ASSOCIATIONS, 18 STATE FARM BUREAUS,
AND 9 INDIVIDUAL CATTLE PRODUCERS IN SUPPORT OF THEIR MOTION FOR
LEAVE TO FILE A BRIEF AMICUS CURIAE SUPPORTING
DEFENDANTS-APPELLANTS AND VACATUR**

Pursuant to Fed. R. App. P. 27 and 29, and 9th Cir. R. 27-1,
the National Cattlemen's Beef Association ("NCBA"), the American
Farm Bureau Federation, the National Pork Producers Council, 29
state cattlemen's associations, 18 state Farm Bureaus, and 9
individual cattle producers submit this reply in support of
their motion for leave to file a brief amicus curiae supporting

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defendants-appellants United States Department of Agriculture ("USDA") and vacatur in the above-captioned matter. Plaintiff-appellee Ranchers Cattlemen Action Legal Fund United Stockgrowers of America ("R-CALF") has opposed the filing of all the proposed amicus briefs filed in support of USDA in this important appeal, including the proposed amicus brief of NCBA, et al. For the reasons that follow, NCBA, et al. respectfully request that their motion to file an amicus brief be granted.

1. This case involves a matter of extraordinary public interest. This Court itself has recognized the unique significance of this case by including a special link to the filings in this case on the home page of its website. See www.ca9.uscourts.gov. As explained in NCBA, et al.'s motion for leave to file an amicus brief and the amicus brief itself, the Final Rule at issue in this case is based on sound science that demonstrates that the BSE risk mitigation measures in place in both the United States and Canada are effective and will ensure the continued safety of U.S. beef. In rejecting that evidence and enjoining the Rule, the District Court effectively held that those safeguards are ineffective, thus raising unwarranted questions about the safety of U.S. beef. The District Court's decision thus threatens to undermine U.S. consumer confidence in U.S. beef, and to discourage foreign nations from opening their markets to U.S. beef exports. Given these potentially

devastating consequences, it is not surprising that numerous interested entities and individuals have sought to participate as amici in this case in support of USDA.

2. It is beyond question that NCBA, et al. have a direct and substantial interest in this case. NCBA, et al. comprise the largest organization representing the Nation's cattle industry and a broad coalition of organizations representing American ranchers and farmers whose livelihoods would be seriously jeopardized if consumer confidence in U.S. beef were undermined. Collectively, the co-signers of this single amicus brief represent more than 85 percent of the Nation's cattle farms and ranches, 75 percent of the Nation's cattle, and 5.6 million farm families. See NCBA, et al. Br. 2.

R-CALF takes issue with the interest of a single entity -- the National Pork Producers Council ("NPPC") -- among the nearly 60 entities and individuals that have joined NCBA, et al.'s brief, asserting that the brief "makes no attempt to explain [NPPC's] interest." Opp. 16 n.9. That is incorrect. The brief's Statement of Interest specifically notes that all prospective amici that have joined NCBA, et al.'s brief "have a significant interest in ensuring that food safety decisions are based on sound science." NCBA, et al. Br. 2. That includes NPPC, whose members are greatly affected by USDA's food safety decisions and judicial review of those decisions. NPPC has a

direct interest in ensuring that federal regulations governing international agricultural trade that are based on sound science are not erroneously invalidated by courts.

3. R-CALF objects to the filing of all proposed amicus briefs in support of USDA because all prospective amici have not joined together in a single brief. See Opp. 3. R-CALF glosses over the fact that nearly 60 prospective amici have joined together in NCBA, et al.'s brief. As previously explained, these amici have done so in an effort to comply with 9th Cir. Advisory Note to R. 29-1. See NCBA, et al. Mot. 4. Because other prospective amici -- ranging from the Government of Canada to Canadian cattle producers to U.S. meat processors -- have their own distinct interests or perspectives on the issues presented by this case, it was not feasible for all prospective amici to join in a single brief.

There is no basis for R-CALF's extraordinary request that this Court "order the filing of a single amicus brief by these entities." Opp. 20. Even R-CALF grudgingly acknowledges that the broad array of entities and individuals that have filed amicus briefs in support of USDA have "different perspectives" on the important issues raised by this case. Opp. 12. Nothing in Fed. R. App. 29 or 9th Cir. R. 29-1 limits the number of amicus briefs that may be filed by different entities with different perspectives on a legal issue to one. To the contrary,

multiple amicus briefs by separate groups or individuals are commonplace in the federal courts of appeals and the Supreme Court in cases, such as this one, of exceptional public importance.

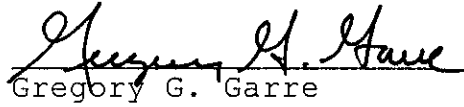
4. R-CALF also objects to the filing of all proposed amicus briefs in support of USDA on the ground that they "do not significantly expand upon [the] issues and arguments already raised in USDA's opening brief." Opp. 11. That argument is also without merit. Indeed, at the same time that R-CALF purports to object to the proposed amicus briefs on the ground that they do not add to the arguments and analysis in USDA's brief, R-CALF objects to certain amicus briefs precisely because they "expand upon [the] issues and arguments * * * raised in USDA's opening brief." See Opp. 16-18. In addition, R-CALF requests the opportunity to file a "supplemental brief" addressing the arguments raised by the proposed amicus briefs. Opp. 3, 20.

Because amici generally may not raise issues not raised by the parties, NCBA, et al.'s brief addresses some of the issues that are addressed in USDA's brief. But that does not make NCBA, et al.'s brief "duplicative." Opp. 3. NCBA, et al.'s brief elaborates on the science and expert opinion that provides a sound basis for the Final Rule. Indeed, while R-CALF claims that these issues are addressed "in more detail and at length in

USDA's brief," Opp. 6., the opposite is actually true. Compare NCBA, et al. Br. 18-21 (Canada's incidence rate) with USDA Br. 34-36; NCBA, et al. Br. 21-25 (feed ban) with USDA Br. 36-39; NCBA, et al. Br. 25-27 (SRMs) with USDA Br. 39-40; NCBA, et al. Br. 27 (mandatory testing) with USDA Br. 42-43. Moreover, NCBA, et al.'s brief points to specific studies in the administrative record that support the Final Rule that are not discussed in USDA's brief. See NCBA, et al. Br. 25-26.

5. The filing of NCBA, et al.'s brief would not prejudice R-CALF, which has had ample time to respond to the brief. Nor would R-CALF somehow be prejudiced by the filing of other proposed amicus briefs. R-CALF initiated this litigation and now has chosen to defend a legally erroneous ruling that may have potentially devastating consequences for the Nation's most important agricultural product. The strong amicus showing in support of USDA should not come as a surprise -- certainly not to an "Action Legal Fund" such as R-CALF, which was founded to litigate. See www.r-calfusa.com/News%20Releases/faq.htm#Why%20was%20R-CALF%20USA%20founded. In any event, given that R-CALF asserts that the proposed amicus briefs are "duplicative," R-CALF can hardly claim that it would be unduly burdensome for it to respond to them in defending the ruling it alone sought.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Gregory G. Garre", written over a horizontal line.

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May 6, 2005


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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May, 2005, the foregoing Reply of the National Cattlemen's Beef Association, et al., in Support of Their Motion for Leave to file a Brief Amicus Curiae Supporting Defendants-Appellants and Vacatur was served by first-class mail on:

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